

## LEGAL GUARDIAN OF JOHN LESNIAK

APRIL 30, 1942.—Ordered to be printed

Mr. ROSIER, from the Committee on Claims, submitted the following

## REPORT

[To accompany H. R. 4723]

The Committee on Claims, to whom was referred the bill (H. R. 4723) for the relief of the legal guardian of John Lesniak, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

On page 2, line 3, strike out the words "Works Progress" and insert "Work Projects".

The facts are fully set forth in House Report No. 1719, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1719, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 4723) for the relief of the legal guardian of John Lesniak, having considered the same, report favorably thereon with amendmeps and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, strike out "is" and insert in lieu thereof "be, and he is hereby".

Page 1, line 5, after "to" and before "John" insert "the legal guardian of".

Page 1, line 7, strike out the figures "\$10,000" and insert in lieu thereof "\$2,750".

Page 1, line 7, strike out "his claim" and insert in lieu thereof "all claims".

Amend the title so as to read: "A bill for the relief of the legal guardian of John Lesniak."

The purpose of the proposed legislation is to pay to the legal guardian of John Lesniak the sum of \$2,750 for personal injuries sustained on July 8, 1940, as result of explosion of certain dynamite percussion caps, found by him upon premises of a Work Projects Administration project in Elizabeth, N. J.

## STATEMENT OF FACTS

On July 8, 1940, John Lesniak, while playing with companions in the rear of a Work Projects Administration tool shed, found a number of percussion caps used to detonate dynamite. Not knowing what they were, he gave one each to the youngsters he was playing with, and placed the remaining caps in his hip pocket; that upon his return home, while washing his hands he accidentally struck the caps which were in a pocket of his trousers against some object in the bath-

room, presumably the bathtub, whereupon the caps exploded, injuring him. As a result of the explosion, he sustained multiple contusions, lacerations, and powder burns of the entire body, traumatic amputation of left, middle, and index fingers and thumb, extensive lacerations through muscles of left thigh, antero lateral aspect, scrotal contusions and burns, contusions of left eye. The Work Projects Administration, in a report to the committee dated July 21, 1941, finds as follows:

"After consideration of the evidence submitted the Administration is of the opinion that, if the caps were found on the vacant lot near the shed as alleged, they were not placed there by any employee of the Work Projects Administration, since the evidence conclusively establishes that no explosives of any kind were used or kept on the project. Accordingly, the Administration is constrained to recommend against the enactment of the proposed legislation. Finally, it is suggested, since John Lesniak is an infant, that the bill be amended, in the event of a favorable report, so as to make such appropriation as the Congress deems proper payable to his legal guardian in order that such appropriation may be expended for his benefit under the laws of the State of New Jersey."

Your committee, after carefully considering the facts of the case, are of the opinion that although no blasting dynamiting is being done on this particular project, thereby eliminating the need for precision caps on the project, that the precision caps were there through the negligence of the personnel of the Work Projects Administration, that the project being carried on at this site was that of constructing a drainage system or storm gutters, in which they used large pipes to carry the water under roadway footpaths. According to the statement of John Lesniak:

"I am 12 years old and I go to St. Hedwig's School, and I am in seventh grade. On July 8, 1940, I was playing out in front of my house and after lunch, Leon Konoski asked me to go with him to Garden Street. Jimmy Fitzpatrick and Joe Konoski went with us. We came back across empty lots and on Summer Street, by South Broad Street, there is a big Work Projects Administration lot with some shacks, big cement pipes, and building material. We started a game of "cops and robbers." Leon and I were cops and Jimmy and Joe were robbers. We used one of the big cement pipes as a jail. There were some cinders in the jail, and I started to clean out the jail by kicking the cinders, and I saw some brass things laying on top. I picked them up and I kicked the rest of the cinders out and I found some more. I found about 12 shiny things. I gave one to Leon and I kept the rest for myself. After playing awhile, we started to jump across the cement pipes, and one of the men chased us home."

According to the statement of Leon Konoski—

"I remember the day that John Lesniak was hurt. It was vacation time last year and was a couple of days after the Fourth of July. On that day, after lunch, my father, John Konoski, who owns a butcher shop at 722 Grier Avenue, told me to take an order to Mrs. Medvec on Garden Street. My brother, Joe, was with me when I took the package. Jimmy Fitzpatrick was outside and Johnny Lesniak was in his yard, which is next to the butcher shop. We walked over to Garden Street and delivered the package. On the way back, we stopped in the White Clock Hamburger joint for a drink of water. We crossed the highway and took a short cut through the road, which cuts through the backyards of Grier Avenue and South Broad Street. On the road in back of the dry goods store owned by Goldweitz were some shacks and stuff like gravel, wood, and big cement sewer pipes. We saw the big cement sewer pipes and we started a game of "cops and robbers." We made a jail out of one of the big sewer pipes. Jimmy Fitzpatrick and my brother, Joe, were robbers and Johnny Lesniak and myself were cops. We gave the "robbers" a head start and I started out after them. I was chasing them when Johnny Lesniak yelled, "Hey, look what I got." I went back to the big cement pipe and I saw that Johnny had found some shiny brass or copper round things, with bottoms on them. He found about a dozen of them. They looked empty, but I could see that down in the bottom, they were filled with something, almost to the top, and it looked orange. Johnny gave me one, the rest he kept. We kept on playing for a while and then we started to jump across the tops of the big pipes. One of the men who was working on the lot told us to get off before we got hurt. We went back to the store and we played in front of the store until about 4 o'clock."

According to the statements of Jimmy Fitzpatrick and Joe Konoski, after the game of "cops and robbers" started—

"Joe and myself were robbers, and after the game started, we got a head start, and started to run away and hide. We heard Johnny Lesniak yell, "Hey, look

what I got," but I thought it was a trick, and I wouldn't come back. When I saw they weren't chasing us any more, I came back and Johnny showed me what looked like empty shells. They were shiny and made from brass or copper. He gave one to Leon and kept the rest for himself."

The statement of Johnny Lesniak and his three companions leads the committee to believe that the percussion caps were on the project, and were the property of the Work Projects Administration, and it is felt that, in justice, negligence should not be computed against this innocent youngster, and thereby deny him the relief to which he is equitably entitled.

FEDERAL WORKS AGENCY,  
WORK PROJECTS ADMINISTRATION,  
Washington, D. C., July 21, 1941.

The Honorable DAN R. McGEHEE,  
Chairman, Committee on Claims,  
House of Representatives.

DEAR MR. McGEHEE: Reference is made to your letter of June 20, 1941, and my acknowledgment of June 24, 1941, relative to H. R. 4723, a bill for the relief of John Lesniak, an infant, of the city of Elizabeth, county of Union, and State of New Jersey.

The Administration's report is as follows:

The bill proposes to appropriate "the sum of \$10,000 in full satisfaction of his claim against the United States for damages for personal injuries sustained by him on July 8, 1940, as the result of an explosion of certain dynamite percussion caps found by the said infant, John Lesniak, while on the unguarded premises of certain construction operations under the direction and control of the Federal Works Progress Administration project at No. 705-717 Summer Street, in the city of Elizabeth, county of Union, and State of New Jersey."

It appears that, on July 8, 1940, John Lesniak, aged 12, while playing with companions in the rear of a Work Projects Administration tool shed, located on a vacant lot between 707 and 717 Summer Street, Elizabeth, N. J., found a number of percussion caps used to detonate dynamite. Upon his return home, while washing his hands, he accidentally struck the caps, which were in the pocket of his trousers, against some object in the bathroom, presumably the bathtub, whereupon the caps exploded and injured him. No evidence has been submitted to the Administration to establish that the percussion caps were placed on the vacant lot by any Work Projects Administration employee or that percussion caps were stored or used on the project.

The extent of the boy's injuries is reflected in the following summary of the medical report taken from the records of St. Elizabeth's Hospital, Elizabeth, N. J. where the boy was treated.

1. Multiple contusions, lacerations, and powder burns of entire body.
2. Traumatic amputation of left middle and index fingers and thumb.
3. Extensive lacerations through muscles of left thigh, antero lateral aspect.
4. Scrotal contusions and burns.
5. Contusions of left eye.

Four watchmen, employed on the project at the time of the accident, and prior thereto, in their several affidavits, aver that at no time did they see any dynamite caps on the project, and that at no time during the period of their employment were blasting operations conducted. They further aver that, although it was customary for their superiors to call their attention to articles of value or those which were a potential source of danger to the public, however, at no time was their attention called to the presence of explosives of any type.

The general foreman employed on the project at the time of the accident, in an affidavit dated July 17, 1940, avers that "\* \* \*" at no time, either under my supervision or before has this project used or stored percussion caps, dynamite, or any other explosives."

The Work Projects Administration area clerk, in an affidavit dated May 20, 1941, avers that he had performed his duties in that capacity from December 1937; that, during this period, all purchase orders and requisitions for every project operating in the city of Elizabeth passed through his hands; that there were no requisitions or purchase orders for explosives of any type for any project within the area; and that no Work Projects Administration employee was assigned to any such project as blaster.



After consideration of the evidence submitted, the Administration is of the opinion that, if the caps were found on the vacant lot near the shed as alleged, they were not placed there by any employee of the Work Projects Administration, since the evidence conclusively establishes that no explosives of any kind were used or kept on the project. Accordingly, the Administration is constrained to recommend against the enactment of the proposed legislation.

The attention of the committee is invited to the fact that, since July 1, 1939, the name of the Administration has been "Work Projects Administration" and not "Works Progress Administration" as it appears in line 2, page 2, of the bill.

Finally, it is suggested, since John Lesniak is an infant, that the bill be amended, in the event of a favorable report, so as to make such appropriation as the Congress deems proper payable to his legal guardian in order that such appropriation may be expended for his benefit under the laws of the State of New Jersey.

There are enclosed herewith photostatic copies of pertinent papers.

Sincerely yours,

CORRINGTON GILL,  
Assistant Commissioner.

STATE OF NEW JERSEY,  
County of Union, ss:

Dr. John J. Kloby, of full age, being duly sworn according to law, deposes and says: I am a licensed and practicing physician of the State of New Jersey, with offices at 555 South Broad Street, Elizabeth, N. J.

John Lesniak is known to me. On July 8, 1940, at about 5:30 p. m. he was admitted as a patient to the St. Elizabeth's Hospital, where I am an attending physician.

His history was as follows: The patient was carrying a small metal ball which he found; said ball was in his left trouser pocket. This exploded in a manner unknown to the patient, while he was in the bathroom. The explosion took place at about 5:30 p. m.

The physical description is as follows: Patient's general appearance was that he was a young, white, male; apparently in great pain with multiple lacerations evidently on the verge of shock. The patient was conscious and rational. Head examination disclosed multiple abrasions, contusions, and powder burns of the left side of the face, scalp, and nose. Eye examination disclosed contusion of sclera, with edema of lateral portion of sclera of left eye torn on medial side. Examination of neck disclosed scattered abrasions of the left side of the neck, chest, lungs clear to P. & A.; heart—no enlargement, no murmurs, no trills, sounds fair quality. Chest wall examination disclosed multiple pain of powder burns, lacerations of chest, anterior and posterior. Abdomen examination same as chest wall. Extremities (a) traumatic amputation of distal phalanx of index finger, thumb of left hand, severe laceration of middle finger of left hand; (b) traumatic laceration of left thigh elliptical in shape about 6 inches in length and width with exposure of muscle of anterior lateral portion of thigh. Genitalia examination: Contusions and burns of scrotum. The patient was operated on by Dr. Thomas J. Walsh and remained at the St. Elizabeth's Hospital from July 8 to August 15, 1940, where I attended and visited him daily. For a period of 6 months thereafter, periodically, he was attended by me either at my office or his home.

Summary of his injuries are: (a) Multiple contusions and lacerations and powder burns of the entire body; (b) traumatic amputation of the left middle index finger and thumb; (c) an extension laceration through muscle of left thigh, anterior, lateral aspects; (d) scrotal contusions and burns; (e) contusion of left eye.

The patient has permanent injuries as disclosed in the summary from (a) to (e). These injuries will remain with him and, as he becomes older, he will become subject to greater pain and discomfort as a result of these injuries. They are growing progressively worse.

My bill for services has been submitted and it is in the sum of \$150. This sum remains unpaid and it is due and owing to me; namely, \$150.

JOHN J. KLOBY, M. D.

Sworn and subscribed to before me this 7th day of July 1941.

PHILIP DEAN COHEN,  
An Attorney at Law of New Jersey.

STATE OF NEW JERSEY,

*County of Union, ss:*

Catherine Lesniak, of full age, being duly sworn according to law, upon her oath, deposes and says: I am the mother of John Lesniak and I reside at No. 718 Grier Avenue, in the city of Elizabeth. I am 40 years of age and I am the wife of Joseph Lesniak, who is 43 years of age.

On July 8, 1940, at about 5 p. m., I called my son, Johnny, in and told him to wash up and to get ready for supper. He went into the bathroom and I heard an explosion. I ran into the bathroom and Johnny was lying on the floor, his face bleeding and his clothes torn from his body. There was a big hole in his left side. I screamed and my neighbor, Mr. Konoski, ran in, put a blanket around Johnny, and took him to St. Elizabeths Hospital. I went with him in his car and stayed at the hospital. They took my son's clothes and in the pocket was found some brass shells. When my son became conscious I asked him where he had found the shells and he told me that he found them on the Work Projects Administration lot on the corner of Summer Street and South Broad Street, in the city of Elizabeth.

My son was in the hospital for about a month and a half, and he was treated by Dr. Kloby and Dr. Walsh. When he was sent home from the hospital he did not go back to school for about 6 months. My son's left eye is injured, he has lost part of his thumb and index finger of the left hand, and from 2 inches above the knee to about his hip on the left leg there is a deep impression from which the flesh is gouged out. Before the injury my son was in very good health. Since that time he does not eat well, he sleeps badly, and his leg, hand, and eye constantly hurt him. He is unable to see from his left eye. I am unable to pay the bills for his medical attention. The St. Elizabeth's bill is \$213.80; Dr. John J. Kloby of No. 555 South Broad Street, Elizabeth, who treated him, has billed me for \$150; and Dr. Thomas J. Walsh, of No. 335 South Broad Street, Elizabeth, N. J., has billed me \$150.

CATHERINE LESNIAK.

Sworn and subscribed to before me this 7th day of July 1941.

PHILIP DEAN COHEN,  
*An Attorney at Law of New Jersey.*

STATE OF NEW JERSEY,

*County of Union, ss:*

John Lesniak, being duly sworn, according to law, deposes and says: I am 12 years old, and I go to St. Hedwig's School, and I am in the seventh grade.

On July 8, 1940, I was playing out in front of the house, and after lunch Leon Konoski asked me to go with him to Garden Street. Jimmy Fitzpatrick and Joe Konoski went with us. We came back across empty lots and on Summer Street, by South Broad Street, there is a big Work Projects Administration lot with some shacks, big cement pipes, and building material. We started a game of "cops and robbers." Leon and I were cops and Jimmy and Joe were robbers. We used one of the big cement pipes as a jail. There were some cinders in the jail, and I started to clean out the jail by kicking the cinders and I saw some brass things laying on top. I picked them up and I kicked the rest of the cinders out and I found some more. I found about 12 shiny things. I gave 1 to Leon and I kept the rest for myself.

After playing awhile, we started to jump across the cement pipes, and one of the men chased us home. When I got to the house, the lady downstairs, Mrs. Hudock, asked me to get her a paper. I got on my bike, went to the store and when I got back she gave me 2 cents. I bought a popsicle for 2 cents. I started to put my bike away in the back yard, and my mother called me to come upstairs and get washed for supper. I went to the bathroom and then I don't know what happened. The next thing I knew, I was in the hospital and I was hurt. My left leg was all bandaged, my face and head was bandaged, and my left hand was bandaged. I found out afterward that what I picked up was dynamite caps and they had exploded in my pocket. They tore off the thumb and first finger of my left hand, put a big hole in my left leg and my eye was hurt, and my face all shot up. I was in the hospital for about a month and a half, and I was home altogether for about 6 months.

JOHN LESNIAK.

Sworn and subscribed to before me this 7th day of July 1941.

PHILIP DEAN COHEN,  
*An Attorney at Law of New Jersey.*

STATE OF NEW JERSEY,  
County of Union, ss:

Leon Konoski, being duly sworn, upon his oath, deposes and says: I am 13 years old and I live at No. 722 Grier Avenue, Elizabeth, N. J. I go to St. Mary's School and I am in the eighth grade.

I remember the day that John Lesniak was hurt. It was vacation time last year and was a couple of days after the Fourth of July. On that day, after lunch, my father, John Konoski, who owns a butcher shop at No. 722 Grier Avenue, told me to take an order to Mrs. Medvec on Garden Street. My brother, Joe, was with me when I took the package. Jimmy Fitzpatrick was outside and Johnny Lesniak was in his yard, which is next to the butcher shop. We walked over to Garden Street and delivered the package. On the way back, we stopped in the White Clock hamburger joint for a drink of water. We crossed the highway and took a short cut through the road which cuts through the back yards of Grier Avenue and South Broad Street.

On the road in back of the drygoods store owned by Goldweitz were some shacks and stuff like gravel, wood, and big cement sewer pipes. We saw the big cement sewer pipes and we started a game of "cops and robbers." We made a jail out of one of the big sewer pipes. Jimmy Fitzpatrick and my brother, Joe, were robbers and Johnny Lesniak and myself were cops. We gave the "robbers" a head start and I started out after them. I was chasing them when Johnny Lesniak yelled, "Hey, look what I got." I went back to the big cement pipe and I saw that Johnny had found some shiny brass or copper round things, with bottoms on them. He found about a dozen of them. They looked empty, but I could see that down in the bottom they were filled with something. One was filled almost to the top and it looked orange. Johnny gave me one; the rest he kept. We kept on playing for a while and then we started to jump across the tops of the big pipes. One of the men who was working on the lot told us to get before we got hurt. We went back to the store and we played in front of the store until about 4 o'clock. The lady who lives downstairs, Mrs. Hudock, called Johnny over and asked him to get a paper for her. He got on his bike and when he got back she gave him 2 cents and he bought a popsicle. He went back to his own backyard.

I was sitting on the running board of an automobile in front of the house next to the store when I heard a loud noise that sounded like a smack-up of cars. I looked around and I heard a loud yelling from Johnny's house. I ran up and was told that Johnny was hurt. I saw him covered with blood and he had a blanket wrapped around him. My father came in and picked him up and put him in his car and the boy next door drove the car down to the hospital. In a little while a policeman came around and asked me a lot of questions. I told him everything we had done and my mother gave him the thing that we found on the lot. The cop and I went back to the Work Projects Administration lot and the cop raked out the ashes, but did not find any more shells. We went back to the house.

That night a detective came to the house. He took Jimmy Fitzpatrick and me for a ride and we showed him the house where we took the order, then we went to the Work Projects Administration lot, then he took us home. The next day the detective came again and he got me and my brother, Joe, and we saw the chief of detectives and we told him everything we knew, and the same thing that I am saying now.

LEON KONOSKI.

Sworn and subscribed to before me this 7th day of July 1941.

PHILIP DEAN COHEN,  
An Attorney at Law of New Jersey.

STATE OF NEW JERSEY,  
County of Union, ss:

Joseph Konoski, being duly sworn, upon his oath, deposes and says: I am 8 years old and I live at No. 272 Grier Avenue, Elizabeth. I am in the fifth grade and I go to St. Mary's School.

A couple of days after the Fourth of July last year, my brother, Leon, had to deliver a package to Garden Street for my father. I was playing in front of the house when he came out and he asked me, Jimmy Fitzpatrick, and Johnny Lesniak to go with him. We went to Garden Street and then came back through the backyards, and on Summer Street where there is a Work Projects Administration lot, we started a game of "cops and robbers." There was some big cement pipes and we made a jail out of one of the pipes.



Jimmy Fitzpatrick and I were robbers and we got a head start. I heard Johnny Lesniak yell that he found something. I thought it was a trick and did not come back until I saw Leon and Johnny were not chasing us. When I came back, Johnny showed us some things that he found in some cinders that was by the jail. They looked like shells and they looked empty. We played on the lot until one of the men chased us, because we were jumping across the tops of the big cement pipes. We went home and I went into the butcher shop and after a while I heard a loud noise and Johnny's mother started to yell and my father ran upstairs. I saw him carry Johnny, then wrapped in a blanket and his face was bleeding. They took him to the hospital. That night I had to go to the doctor and when the detective came around I wasn't home, but the next day a detective came and took me down to police headquarters and I told the chief of detectives everything that I am saying now.

JOSEPH KONOSKI.

Sworn and subscribed to before me this 7th day of July 1941.

PHILIP DEAN COHEN,  
*An Attorney at Law of New Jersey.*

STATE OF NEW JERSEY,

*County of Union, ss:*

James Fitzpatrick, being duly sworn, upon his oath, deposes and says: I am 8 years old and I live at No. 722 Grier Avenue, Elizabeth, N. J. My father's name is James and my mother's name is Elizabeth. I am in the third grade of St. Mary's School.

A couple days after the Fourth of July of last year, I was playing out in front of the house, when Leon Konoski came out with a package from his father's store. He said that he had to make a delivery for his father on Garden Street. Johnny Lesniak, Joe Konoski, Leon Konoski, and myself all went to Garden Street. When we delivered the package we came back and started to play on a Work Projects Administration lot on Summer Street and South Broad Street. There was big cement pipes on the lot, and we started a game of "cops and robbers."

Joe and myself were robbers and after the game started, we got a head start and started to run away and hide. We heard Johnny Lesniak yell "Hey, look what I got," but I thought it was a trick and I wouldn't come back. When I saw they weren't chasing us any more, I came back and Johnny showed me what looked like empty shells. They were shiny and made from brass or copper. He gave one to Leon and kept the rest for himself. We started to play on top of the cement pipes when one of the men working there told us to get off before we get hurt and to go home. I went back to my house and later on I heard a loud noise. I came outside and I was told that Johnny Lesniak had been hurt. That night a cop came and he took us in his car to Garden Street, where we delivered the package and then we showed him where we were playing and where Johnny Lesniak found the shells. I did not go to police headquarters the next day because I went on an excursion.

JAMES FITZPATRICK.

Sworn and subscribed to before me this 7th day of July 1941.

PHILIP DEAN COHEN,  
*An Attorney at Law of New Jersey.*

THOMAS J. WALSH, M. D.,  
*Elizabeth, N. J., July 21, 1941.*

Re John Lesinak.

PHILIP DEAN COHEN,  
*Elizabeth, N. J.*

DEAR SIR: The above-named patient was under my care at the St. Elizabeth Hospital, Elizabeth, N. J., from July 8, 1940, to August 15, 1941. He was operated on by me on July 8, 1940. His diagnosis was:

- (1) Extensive lacerations on the anterior and lateral surfaces of the left thigh about 6 inches long with exposure of the muscles and fascia.
- (2) Traumatic amputation of the distal phalanx of the left thumb and left index finger and severe lacerations of the distal phalanx of the left middle finger.

If there is any other information you desire, just drop me a line and I will send you the information.

I am enclosing my bill for \$150 for professional services rendered to the above-named patient.

Very truly yours,

THOMAS J. WALSH, M. D.

THOMAS J. WALSH, M. D.,  
*Elizabeth, N. J., July 21, 1941.*

PHILIP DEAN COHEN,  
*Elizabeth, N. J.*

For professional services for John Lesinak, 718 Grier Ave., city----- \$150